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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,163	02/27/2004	Haruo Kawashima	12010-0056	4596
22902	7590	04/29/2008	EXAMINER	
CLARK & BRODY			TOMPKINS, ALISSA JILL	
1090 VERMONT AVENUE, NW			ART UNIT	
SUITE 250			PAPER NUMBER	
WASHINGTON, DC 20005			3765	
			MAIL DATE	DELIVERY MODE
			04/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/787,163

Applicant(s)

KAWASHIMA ET AL.

Examiner

ALISSA J. TOMPKINS

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 9, and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment filed on 1/8/2008 has been received. Claims 1-11 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miles (U.S. 2,378,493) in view of Nelson (U.S. 3,147,489). Miles discloses an optical device comprising a pair of lens assemblies. Each lens assembly includes an eye cup 11. A link 10 connects the lens assemblies to each other. Each of the lenses has a patch/belt-like portions 14a and 14b having less light transmittance than the lens. The belt-like portions may be integral with the lens material or may consist of separate elements attached to or disposed adjacent the surface of the lens or positioned between elements of the lens (Column 2, 22-27). The patches/belt-like portions may for some purposes be entirely or substantially opaque (Column 3, 57-58).

The lens assemblies have a transverse direction horizontally extending across the head and a longitudinal direction vertically extending orthogonally to the transverse direction. The lens assemblies are divided into an intermediate section (patches/belt-like portions) extending across the lens at a substantially middle level as viewed in a vertical direction, an upper section lying above the intermediate section and a lower section lying below the intermediate section wherein the intermediate section presents a see-through clarity lower than those presented by the upper section and the lower section. Miles does not explicitly state how the see-through clarity is specified, but since the intermediate sections may be opaque that would consequently give the intermediate section a total luminous transmittance of substantially 0%. The applicant provides no criticality for why each of the intermediate sections should have a dimension in the range of 2 to 10 mm. Although Miles does not specify the dimensions of his intermediate sections, it would have been obvious that his intermediate sections would have similar dimensions so that they would not take over too much lens space. Miles also does not show intermediate sections which extend from one side of a frame portion of an eye cup and then terminating at an opposite side of the frame portion of the same eye cup. However, it would have been obvious to extend Miles's intermediate sections entirely across the eye-cup. Modifying the intermediate section of Miles would in no way change the function of the eyewear and therefore would not destroy the reference.

However, Miles is missing an eye skirt located around each eye cup and a strap to put around the head of the wearer. Nelson discloses safety goggles having a pair of lens assemblies, each lens assembly including an eye cup, each eye cup including a

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skirt 12. When the goggle is held in close contact with a user's face, the skirt would help to form a seal, which would keep water out of a user's eye. A strap 19 is used to secure the goggles to the head of the wearer. Miles and Nelson both disclose forms of eyewear. Although they don't specifically state that they can be worn while swimming, they are both completely capable of being worn while swimming. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the goggles of Nelson to modify the optical device of Miles in order to provide eyewear that can provide alignment to the wearer during sporting activities.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5 and 9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hirschmann (U.S. 2,981,957) and Hirschmann (U.S. 2,804,623) show goggles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA J. TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/
Examiner, Art Unit 3765

/Gary L. Welch/
Supervisory Patent Examiner, Art Unit 3765